

GST withholding for Vendors/Developers

From 1 July 2018, a purchaser of 'new residential premises' or 'potential residential land' (i.e. new subdivided land) is required to withhold and remit the GST component payable directly to the ATO at settlement; not the developer (vendor) who had previously done so. There are exceptions to this GST withholding requirement, including the sale of commercial residential premises, premises created from substantial renovation or of subdivided land containing a building used for commercial purposes, or if the purchaser acquires the premises for a 'creditable purpose'.

What does this mean for an Agent?

GST withholding applies to the sale of any taxable supply of 'new residential premises' or 'potential residential land'.

The preparation of a contract of sale where GST applies will remain the same.

If the vendor is unsure how to complete the GST questions in the contract of sale, **it should seek advice from its accountant to ensure the GST treatment is correct.**

The GST component included in the purchase price must be remitted by the purchaser direct to the ATO; not paid to the vendor at settlement.

It is understood that REISA and Society of Auctioneers and Appraisers have, or will soon, release an updated contract of sale to reflect the GST withholding requirement. If you need any further assistance in completing the contract of sale drafting, please let us know.

What does this mean for a Conveyancer?

A conveyancer should be mindful of a contract for sale where GST is applicable, and the property is a newly constructed residential premises or subdivision of residential land.

When acting for the vendor, the conveyancer should discuss with the vendor if there is an obligation to withhold, and suggest the vendor seek advice from its accountant to arrange the appropriate notice to the purchaser (required 14 days prior to settlement).

When acting for the purchaser, the conveyancer should be mindful that the GST component of the sale price may need to be withheld and paid to the ATO.

If a notice from the vendor is received, notice of the payment will need to be given to the ATO prior to settlement and further notification of settlement date confirmation in order to complete payment on the settlement date.

What does this mean for a Purchaser?

The direct effect on a purchaser should be minimal as its conveyancer will typically remit the necessary payment to the ATO at settlement from the funds available for settlement.

The purchaser should receive a notification from the vendor 14 days prior to settlement setting out the obligation to withhold.

The purchaser is responsible for notifying the ATO of the intended withholding before they are required to make the payment on the settlement date.

What does this mean for a Vendor?

The vendor must notify a purchaser if it is making a supply of 'residential premises' or of 'potential residential land', and if a purchaser is required to make payment of the GST withholding, prior to settlement. As the notice relates to **all** 'residential premises', a vendor must give notice (which may be incorporated in the contract) even though the sale may not be taxable for GST. **There are penalties for failing to provide a notice to a purchaser.**

The notice must provide the vendor's name and ABN, the GST amount and the payment date (i.e. settlement date). The amount to be withheld will generally be either 10% of the contract price or, if the margin scheme applies, 7%.

A vendor reports the actual GST in its BAS, and will be entitled to receive a credit for the GST withheld.

For further details regarding the new GST withholding for certain taxable supplies of property from 1 July 2018, please contact us on 8366 7900 or email info@eckermannconveyancers.com